

Holme Roberts & Owen LLP

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June 30, 2000



Paul Peronard (Hand Delivery)  
On-Scene Coordinator  
Region 8  
United States Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 500  
Denver, CO 80202-2466

*Kenneth W. Lund*  
(303)866-0409  
lundk@hro.com

Paul Peronard (FedEx)  
501 Mineral Avenue  
Libby, Montana 59923

Re: Libby, Montana Asbestos Site

*Attorneys at Law*

1700 Lincoln Street  
Suite 4100  
Denver, Colorado  
80203-4541  
Tel (303)861-7000  
Fax (303)866-0200  
www.hro.com

Dear Mr. Peronard:

Enclosed please find the Site Access Agreement for the export plant property in compliance with Section VI (4) of the Unilateral Administrative Order for Removal Response Activities.

If you have any questions please call.

Very truly yours,

A handwritten signature in black ink that reads 'Kenneth W. Lund'.

Kenneth W. Lund

KWL:cg  
Enclosure  
cc: Matthew Cohn (Hand Delivery)  
Jon Constan (FedEx)

Denver  
Salt Lake City  
Boulder  
Colorado Springs  
London

## **SITE ACCESS AGREEMENT**

This Site Access Agreement (the "Agreement") is made between W.R. Grace & Co. ("Grace") and the City of Libby, Montana (the "City") (collectively the "Parties").

### **RECITALS**

- A. WHEREAS the United States Environmental Protection Agency ("EPA") issued a Unilateral Administrative Order, dated May 23, 2000 (the "Administrative Order"), regarding property owned by the City (the "City Property");
- B. WHEREAS the Administrative Order requires Grace to conduct a removal action pursuant to CERCLA § 104(e), 42 U.S.C. § 9604(e), and undertake certain remedial activities (collectively "Remedial Activities") on the City Property.
- C. WHEREAS Grace needs access to the City Property to conduct these Remedial Activities and the City wishes to grant such access to Grace and its Designated Representatives.

### **AGREEMENT**

Therefore, the Parties agree as follows:

#### **Definitions.**

- 1. "City Property" means the real property located within Sections 3 and 10, T.30N1, R.31W. of the Libby Quadrangle in Lincoln County, Montana. The City Property is bounded on the north by the City's athletic fields and Kootenai River; on the south by the Burlington Northern Railroad track; on the east by Highway 37; and, on the west by State of Montana Property.
- 2. "Remedial Activities" means all activities involving the City Property identified in the Work Plan Titled Removal and/or Abatement of Asbestos and Vermiculite at the Libby Asbestos Site, Prepared by URS Radian, June 6, 2000.
- 3. "Designated Representatives" means Grace's employees, agents, consultants and contractors performing Remedial Activities.
- 4. "EPA" means all EPA employees, contractors, agents, consultants, designees and representatives.

5. "State" means the State of Montana, Department of Environmental Quality.

Grant of Access.

6. The City agrees to provide Grace and its Designated Representatives, EPA and the State access to the City Property.
7. The City agrees to provide Grace and its Designated Representatives, EPA and the State access to all City water and water rights necessary to conduct the Remedial Activities.
8. All Remedial Activities performed on the City Property by Grace and its Designated Representatives shall be done in compliance with all applicable laws, ordinances, and regulations. The cost of performing the Remedial Activities shall be borne by Grace.
9. Grace agrees to maintain, and/or require its Designated Representatives to maintain, in force during the term of this Agreement: (a) worker's compensation insurance as required by applicable state law; and, (b) general comprehensive liability insurance having a combined single limit of not less than \$1,000,000.
10. The access herein given shall be effective for a period beginning June 19, 2000 and shall be effective until all Remedial Activities have been completed and approved by EPA.
11. Grace shall take reasonable steps to minimize disruption to current tenants of the City Property.
12. This Agreement shall not be construed as a waiver or limitation of any claims, liabilities or defenses by or between the Parties to this Agreement or by or against any third party.
13. Notices shall be deemed given when received. All notices under this Agreement shall be in writing or shall be delivered by mail, personal delivery to the following:

If to Grace:

David M. Cleary, Esq.  
W.R. Grace and Company  
5400 Broken Sound Blvd.  
Boca Raton, FL 33487

Kenneth W. Lund, Esq.  
Holme Roberts & Owen LLP  
1700 Lincoln, Suite 4100  
Denver, CO 80203  
If to the City:

Mayor Anthony <sup>erget</sup> ~~Burgett~~  
Mayor of Libby, Montana  
952 East Spruce Street  
Post Office Box 1428  
Libby, Montana 59923

A Party may change its notice recipient, address at any time by providing written notice to each of the other Parties.

14. Applicable Law. This Agreement shall be subject to and governed by the laws of the State of Montana.
15. Integration. This Agreement shall constitute the entire agreement between the Parties and is subject to modification only upon written agreement of the Parties. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions of this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

16. Execution of Agreement. Each of the undersigned Parties represents and warrants that it is authorized to execute this Agreement on behalf of the respective party and that this Agreement when executed by those Parties shall become a valid and binding obligation enforceable in accordance with its terms.

AGREED TO BY:

W.R. Grace & Co.

By: 

David M. Cleary, Esq.

The City of Libby, Montana

By: 

Anthony Burgett, Mayor  
Libby, Montana